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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In re Application of )

TRINITY BROADCASTING OF )  
FLORIDA, INC. )

File No. BRCT-911001LY

For Renewal of License of )

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SUMMARY

TBF's opposition to Glendale's petition to deny only provides further support for specifying the issues Glendale requested in its petition to deny.

TBF has utterly failed to rebut Glendale's detailed factual showing that NMTV was under the absolute de facto control of TBN. TBF's theory that the Communications Act does not require owners to control licensees is frivolous. Its argument that non-profit corporations should be subjected to a different standard than stock corporations is directly contrary to precedent. TBF's opposition provides further evidence that TBN controls NMTV's affairs. TBF's further explanation concerning Allan Brown's signing of checks on NMTV's bank account is patently false.

TBF largely ignores Glendale's showing that TBN and NMTV lacked candor and misrepresented facts regarding their relationship. Indeed, TBF's opposition only provides further evidence of their refusal to be honest and to make full disclosure.

TBF's opposition demonstrates that NMTV's principals knew that Phillip Aguilar had been convicted of a felony, that the conviction had to be reported to the Commission, and that a conscious decision not to report the conviction was made. Accordingly, a reporting issue must be specified. Moreover, TBF's attempt to explain away this deliberate nonfeasance is self-contradictory and unconvincing.



Commission mandate the specification of the issues requested by Glendale.<sup>1/</sup>

## I. DE FACTO CONTROL ISSUE

### A. Applicable Legal Standards

TBF's opposition relies in large part on two novel legal theories that are directly contrary to the Communications Act and to Commission precedent. First, TBF claims that the multiple ownership rule does not impose any requirement that a non-stock corporation's directors control a corporation. Instead, it argues that the directors need not exercise any control over the corporation's affairs so long as they hold the title of directors. TBF Opposition, Pp. 14-16.

TBF's theory ignores the plain language of the Communications Act, the multiple ownership rule, and fifty years of precedent. In essence, TBF is arguing

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<sup>1/</sup> In its petition, Glendale sought an issue to determine whether a grant of the WHFT(TV) renewal application would be consistent with the multiple ownership rule. In its opposition, TBF points out that there would be no current inconsistency because TBN recently sold its Greensboro, North Carolina television station. TBF Opposition, P. 21. The station was sold after October 7, 1991 according to the Commission's records. It is undisputed that TBN's directors had attributable interests in twelve television stations (excluding NMTV's station) when the WHFT renewal application was filed. Thus, there was a definite time period when TBN's de facto control over NMTV violated the multiple ownership rule. Requested issue (3) should be recast to determine whether the WHFT renewal could have been granted when it was filed on October 1, 1991.

that it is perfectly acceptable for a non-minority controlled corporation to set up a front corporation with minority directors and that the minority directors would not have any obligation to control the corporation's affairs.

The Commission's decision in Trustees of the University of Pennsylvania, 69 FCC 2d 1394, 1396-1398, 44 RR 2d 747, 754-756 (1978) eloquently destroys TBF's argument that control need not be exercised by the owners of a license. Glendale will quote at length from the decision because it is the Commission's definitive explanation as to why a licensee's owners must exercise actual control over the station's operations (footnotes omitted):

## II The Central Importance of Licensee Control

### A. Control Over Station Operations.

A broadcast licensee is a public trustee, entrusted with the use of a precious public resource in return for its agreement to adhere to limited conditions imposed by this Commission. 47 USC §301 (1970). From the first days of broadcast regulation, licensee control over the operation and management of their broadcast facilities has been central to the proper functioning of the regulatory scheme mandated by Congress and enforced by the Commission. Without licensee supervision of and control over the operation of their stations, the key element of the present system - accountability to the public and the Commission - would be lost.

The Congress demonstrated its special concern that ultimate responsibility for a station's operation rests with the party licensed by this Commission by imposing requirements that licensees notify the Commission when a "transfer of control" over a station was proposed and by further requiring a Commission finding that

such a transfer will be in the public interest, convenience, and necessity before it can be consummated.

In WHDE, Inc., we observed that "a realistic definition of the term 'control' includes any act which vests in a new entity or individual the right to determine the manner or means of operating the licensee and determining the policy that the licensee will pursue." Implicit in this definition is the duty of control which a licensee owes, i.e., to itself "determine the manner or means" of its operations and the policies that its station will pursue.

#### B. Control Over Station Personnel

Moreover, the Commission has long held that licensees are responsible for their employees' conduct since "[o]nly by holding a licensee responsible for the operation and management of a station, and only by insistence that the reins be held by the licensee, can there be any reasonable assurance of responsible station operation and management."

In Continental Broadcasting Company, 15 FCC 2d 120, 127 (1968), petition for recon. denied, 17 FCC 2d 485 (1969), aff'd sub nom. Continental Broadcasting, Inc. v. FCC, 439 F.2d 580 (DC Cir.), cert. denied, 403 US 905 (1971) the Commission spoke at length about the responsibility of broadcast licensees to supervise the operations of their employees. It concluded:

"It is not enough that a licensee should issue instructions, detect infractions, make occasional visits and engage in endless correctional correspondence with its station manager. The licensee of a broadcast station has a paramount obligation to apply effective measures to forestall violations and, in those instances where they nevertheless do happen despite reasonable preventative measures, to take additional steps as required to assure against any recurrences."

In Continental, the Commission rejected the contention that lack of knowledge of employee misconduct

absolves a licensee of responsibility. Therein we stated that inherent in such a position

"is the view that a licensee who delegates to persons it deems responsible, authority to operate and manage a station cannot be held responsible for their activities if it is unaware of them. This is, of course, a completely untenable view. Retention of effective control by a licensee of the station's management and operation is a fundamental obligation of the licensee, and a licensee's lack of familiarity with station operation and management may reflect an indifference tantamount to lack of control."  
(emphasis in original)

with approval the following statements in our 1941  
Report on Chain Broadcasting:

licenses when control of station operations does not reside in the owners of the license. See, e.g., WWIZ, Inc., 36 FCC 561, 2 RR 2d 169 (1964). Acceptance of TBF's argument would render the multiple ownership rule a nullity and would destroy a fundamental basis of the regulatory scheme imposed by the Communications Act. Since TBF does not cite one case to support its argument, the argument must be summarily rejected.

That argument is also flatly contradicted by Trustees of the University of Pennsylvania, supra. The applicant in that case was a non-profit corporation governed by forty-two directors that were ultimately responsible for governing the University of Pennsylvania. The licensee in that case argued that since it was a noncommercial licensee (and a nonprofit corporation), it should be judged by a different standard than a regular licensee. 69 FCC 2d at 1418, 44 RR 2d at 778. The Commission, relying on Alabama Educational Television Commission, 50 FCC 2d 461, 32 RR 2d 539 (1975)

statement as an excuse for its flagrant abuse of the Commission's processes by using NMTV as a front to evade the multiple ownership rule. The underlying question that the Commission must answer is whether substantial and material questions of fact exist concerning TBN's control over NMTV's operations.

B. Facts re De Facto Control

Glendale's petition to deny contained a detailed factual showing demonstrating TBN's pervasive control over NMTV. TBF's opposition is remarkable because it fails to address the vast majority of Glendale's factual allegations. Although TBF had every incentive to demonstrate that NMTV's minority directors exercise independent control over its affairs, it made no meaningful attempt to do so. Its failure to meaningfully respond to Glendale's showing is very significant. Even where TBF does offer a response, the response only raises further questions regarding TBF's and TBN's qualifications.

1. TBN's Control of Duff and Aguilar

Glendale demonstrated in its petition that Jane Duff and Phillip Aguilar, NMTV's minority directors, were subject to TBN's control because they were heavily reliant upon TBN and Paul Crouch for money and other assistance. Glendale Petition, Pp. 8-12. TBF claims that "economic indicia of control" are irrelevant in the nonprofit context. TBF Opposition, Pp. 10-11. No

authority or competent factual foundation is given for this argument. Glendale's argument is based upon much more than Duff's and Aguilar's lack of compensation as directors (although that fact is certainly relevant). Neither Duff nor Aguilar could carry out their livelihoods without the financial and other assistance of TBN. Duff receives her paycheck from TBN. TBF's request that the Commission simply ignore that fact cannot rationally be honored.

2. Programming

Glendale demonstrated in its petition that the programming carried by NMTV was the same programming carried and produced by TBN. It also demonstrated that NMTV's minority directors had no role in the formulation of its programming policies. Glendale Petition, Pp. 12-14. TBF makes no attempt to show that Duff or Aguilar have had any independent role in formulating NMTV's programming. It has essentially conceded that they have no such role.

The affiliation agreements between TBN and NMTV (Exhibit 3 to TBF's Opposition) only provides further

programming).<sup>3/</sup> The agreement then gives NMTV a strong disincentive to carry other programming by offering the remainder of TBN's programming to NMTV for free. NMTV's right to reject TBN's programming (Section 5) is also arguably narrower than required by Section 73.658(e) of the Commission's rules since NMTV may only substitute "a program of outstanding local or national importance" (Section 5) while the rule speaks of a program "of a greater local or national importance" (emphasis added).

Glendale recognizes that the agreements give NMTV a right of termination on 120 days notice as well as limited rights of rejection and substitution. No evidence has been offered that NMTV has ever exercised these paper rights, however. NMTV's contract rights are meaningless in the absence of any evidence that they exercised those rights. Fresno FM Limited Partnership, 6 FCC Rcd 1570, 1571, 68 RR 2d 1645, 1646-1647 (Rev. Bd. 1991) at Para. 6.

### 3. Finances - NMTV's Bank Account

In response to a direct inquiry from the Commission, NMTV was forced to disclose that two checks on its bank account that were issued in connection with its proposed

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<sup>3/</sup> TBF misstates that NMTV must only broadcast nine hours a day of programming. TBF Opposition, P. 14. Paragraphs 6(a) and 6(b) clearly indicate that NMTV must carry nine hours of programming plus the prime time "Praise the Lord" program.

purchase of WTGI in Wilmington, Delaware were signed by Allan Brown, who was an officer of TBN but who was not an officer or director of NMTV. Glendale Petition, Pp. 16-17, Attachment 20. In the WTGI proceeding, Jane Duff averred:

I note here that both NMTV checks to the bank, for \$400,000 and \$3.6 million, contain an irregularity. Allan Brown is the vice president of finance for TBN, but he is not an officer or director of NMTV.

Glendale Petition, Attachment 14, P. 14. Ms. Duff expressed no confusion over Mr. Brown's relationship to NMTV, nor did she express any belief that Mr. Brown was ever an officer or director.

Compare footnote 9 on Page 13 of TBF's opposition:

9/ Allan Brown, who is currently an officer of NMTV, did sign checks for NMTV in 1991 when he was not an officer. However, in his affidavit attached as Exhibit 2, he explains that he believed he was NMTV's assistant-secretary and he signed the checks in 'good faith'. Mrs. Duff also mistakenly believed Mr. Brown was an assistant-secretary in 1991.

This footnote raises a multitude of questions concerning TBF's, TBN's and NMTV's willingness to tell the Commission the truth. In September 1991, NMTV never explained why Allan Brown was signing NMTV checks. Now, it claims that Allan Brown believed he was NMTV's assistant secretary. What was the basis for that belief? Why did NMTV never mention this belief in the WTGI proceeding? Did he take other actions with respect to NMTV's affairs because he believed he was an officer?

TBF's response fails to address those questions.

In any event, Mr. Brown's veracity is highly doubtful. Mr. Brown claims:

In late-1990, or early-1991, I thought I had been elected as assistant secretary of National Minority TV, Inc.

On June 11, 1991, however, Mr. Brown signed TBF's ownership report that reported that Mr. Brown was not an officer of NMTV. Glendale Petition, Attachment 1, Exhibit 1, P. 3. How could Mr. Brown reasonably believe he was an NMTV officer when he signed an ownership report stating he was not an NMTV officer?

TBF now claims that Jane Duff believed in 1991 that Mr. Brown was an officer of NMTV. TBF Opposition, P. 13 n.9. That statement is not based upon any competent evidence, since Mrs. Duff makes no such claim in her statement. Moreover, if Mrs. Duff did not know who NMTV's officers or directors were, that lack of knowledge says much about her involvement in NMTV's affairs. In any event, NMTV's minutes of the January 21, 1991 meeting indicate that "[t]he current officers and directors were also elected to new terms." If a new officer - i.e., Mr. Brown, had been elected at that meeting, the minutes would have indicated that fact. Moreover, NMTV's June 14, 1991 ownership report (TBF Opposition, Exhibit 5, Attachment 1) which was signed by Mrs. Duff, does not mention Mr. Brown at all.

The truth is quite clear. NMTV and TBN were forced to disclose that a TBN officer was controlling NMTV's bank account. When confronted with that fact, TBN and NMTV dissembled in an attempt to put the best face on the situation. Their behavior only demonstrates that they are unwilling to be honest with the Commission and that they are unqualified to remain Commission licensees.

4. Finances - NMTV's Reliance on TBN Money

Glendale showed in its petition to deny that when NMTV proposed to purchase WTGI, TBN provided it with the money at a low interest rate and that TBN, not NMTV, raised the funds for the purchase. Glendale Petition, Pp. 14-16. TBF baldly claims that the note underlying TBN's loan to NMTV "is a standard note with standard debtor/creditor terms". TBF Opposition, P. 14 n.10. It is hardly "standard" in a debtor-creditor relationship for the creditor (TBN) to raise the funds needed to repay the note while the debtor (NMTV) sits back and does nothing. While similar notes may have been present in other assignment applications approved by the Commission, no de facto control questions were raised in those proceedings. Here, NMTV's reliance on TBN's fundraising raises very serious questions about its independence.

C. Conclusions re De Facto Control

Glendale's response to TBF's opposition is, by necessity, somewhat limited because TBF's opposition

simply ignores most of Glendale's showing. The portion of Glendale's showing that TBF ignores is, by itself, sufficient to require specification of the issues Glendale requested. TBF's opposition also raises additional questions about the TBF-UMWV relationship and

a systematic attempt to deceive the Commission.

The only meaningful response that TBF provides to this portion of Glendale's petition to deny concerns NMTV's purported reliance on a bank letter to finance the WTGI purchase. Glendale showed that NMTV and TBN lacked candor in the WTGI proceeding by claiming it was relying on a bank letter when it was actually relying upon TBN for the funds it needed for the WTGI purchase. Glendale Petition, P. 23. TBF incorrectly interprets Glendale's argument as an argument concerning the validity of NMTV's financial certification in the WTGI assignment application. TBF Opposition, P. 19.

In fact, the lack of candor Glendale showed was that NMTV claimed to be relying upon bank financing when, in fact, it was relying upon TBN funds. NMTV had a strong motive to conceal its reliance on TBN funds because that reliance would have supported arguments concerning de facto control made in the WTGI proceeding. In its opposition (at P. 19) TBF claims:

The validity or candor of this certification was not affected by the fact, that the applicant, NMTV, subsequently secured funds from a more favorable source. Any applicant, in a financial certification, only certifies that it has access to such funds, not, necessarily that it will draw them down.

That statement is a further demonstration of lack of candor. The WTGI assignment application was filed on March 29, 1991. Glendale Petition, Attachment 6, P. 1.

At that time, however, NMTV had already received \$400,000 from TBN (on March 13, 1991). Glendale Petition, Attachment 20. Thus, NMTV never "subsequently secured funds from a more favorable source [TBN]." It was already relying upon TBN funds when the assignment application was filed. TBN's and TBF's continuing attempt to hide that fact is yet another example of their failure to be honest with the Commission.

### III. AGUILAR'S FELONY CONVICTION

The underlying facts are simple. Phillip Aguilar was convicted in 1976 of felony child abuse. Both Paul Crouch and Jane Duff were aware of that conviction. Glendale Petition, Attachment 10, P. 4, TBF Opposition, Exhibit 4, P. 1. The Commission explicitly required the reporting of Aguilar's conviction, and Mrs. Duff, at a minimum, was aware of that requirement. TBF Opposition, Exhibit 4, P. 2. Nonetheless, NMTV answered "No" to the relevant question although Aguilar's felony conviction required a "Yes" answer. Mrs. Duff now claims that "it simply did not occur to me that his past criminal record was relevant to his qualifications" or that "I simply did not focus on the FCC requirements in connection with Rev. Aguilar..." TBF Opposition, Exhibit 4, Pp. 1-2. Thus, NMTV refused to report Aguilar's conviction although the Commission required it to be reported, NMTV knew it had

to be reported and all three of NMTV's directors were aware of the conviction. Its intentional refusal to report that information establishes an intent to deceive the Commission and requires the specification of a reporting issue.

TBF contradicts itself concerning the state of public knowledge concerning Aguilar's conviction. Mrs. Duff describes "Rev. Aguilar's criminal past" as "widely publicized and known". TBF Opposition, Exhibit 4, P. 3. Yet, on Page 17 of the opposition, counsel claims with respect to amendments filed in June 1991:

These disclosures predated by weeks any public disclosure of the fact of Rev. Aguilar's prior conviction by any other source.

That statement is more than incorrect:<sup>5/</sup> it is deceitful. TBF cannot claim that the conviction was both "widely publicized" and not publicly disclosed. The important fact is that it was never disclosed to the Commission. TBF cannot argue that the Commission should have known about the conviction since its own counsel did not know about the conviction. TBF Opposition, Exhibit

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<sup>5/</sup> The Orange County Register article describing Aguilar's past was published on June 9, 1991. The amendments and ownership report that NMTV refers to were made between June 14 and June 18, after the publication of the Register article. Even the cryptic footnote contained in NMTV's May 22, 1991 opposition (Glendale Petition, Attachment 6, P. 35 n.23) apparently came after



NMTV have ignored that fundamental requirement. Its explanation concerning the statement in the WTGI proceeding that NMTV first learned of the conviction in 1991 cannot be accepted at face value. The pleading explicitly said that NMTV - not NMTV's counsel - had just recently learned of the conviction. Of course, that statement is absolutely false.

In any event, it cannot be concluded at this point that Aguilar has been rehabilitated. See Exhibit 11 to the "Reply to Opposition to Petition to Deny" filed by Don Borowicz on July 2, 1991. TBF's citation of Alessandro Broadcasting Co., 99 FCC 2d 1, 56 RR 2d 1568, 1575 n.13 (Rev. Bd. 1984) is inapposite because the principal in that case was formally rehabilitated by state authorities. Also, Alessandro predates the Commission's Policy Regarding Character Qualifications in Broadcast Licensing, 5 FCC Rcd 3252, 67 RR 2d 1107 (1990) where the Commission made all felony convictions relevant to an applicant's qualifications. TBF does not cite one case for the proposition that NMTV was allowed to disregard the plain requirements of the application form and not report Aguilar's conviction. Accordingly, the reporting issue requested by Glendale must be specified.

**IV. CONCLUSION**

The Commission is faced with a series of licensees that consistently refuse to be candid with the Commission. Despite pretenses that they are disclosing everything to the Commission, TBF, TBN and NMTV have repeatedly made false statements to the Commission, lacked candor, and refused to make required disclosures. These companies have deliberately failed to comply with the Commission's core requirements of truthfulness and candor. The Commission should take prompt action to designate TBF's renewal application for hearing on the issues requested by Glendale.

Accordingly, Glendale asks the Commission to grant its "Petition to Deny".

Respectfully submitted,

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Date: March 12, 1992

**CERTIFICATE OF SERVICE**

I, Linda Gibson, do hereby certify that on the 12th day of March 1992, a copy of the foregoing "Reply to Consolidated Opposition to Petitions to Deny" was sent via first class mail, postage prepaid to the following:

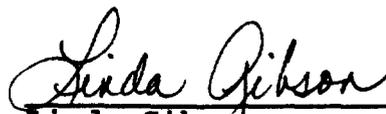
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